IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 122 of 2003
With
CRIMINAL APPEAL No. 123 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

Criminal Appeal No. 122 of 2003

THAKORBHAI MOTIYABHAI GAMIT
Versus
STATE OF GUJARAT

Criminal Appeal No. 123 of 2003

BABABHAI BAVIYABHAI GAMIT
Versus
STATE OF GUJARAT

==========

Appearance :
MS ROOPAL R PATEL for Appellants
MR SS PATEL APP for Opponent

==========

CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 19/09/2006

ORAL JUDGMENT

1 Both the appellants of these two Appeals were co-accused of Special N.D.P.S. Case No. 11 of 2001 of the Court of Additional Sessions Judge at Surat and have preferred separate Appeals under Section 374 of the Code of Criminal Procedure against the judgment and order delivered by learned Additional Sessions Judge, Surat, Fast Track Court, Surat, on 27th of December, 2002, in said Special NDPS Case No. 11 of 2001, convicting each of the appellant for the offences punishable under Section 20(b)(2)(b) to read with Section 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 and each of the appellant (i) Thakorbhai Motiyabhai Gamit and (ii) Bababhai Baviyabhai Gamit, was sentenced to undergo rigorous imprisonment of five years and to pay fine of Rs. 25,000/-, in default, to undergo simple imprisonment of six months. The learned Trial Judge gave the benefit of set off to both the appellants for the period for which each of the appellant remained under trial.

2 As per the brief facts of the case, while on 26th of August, 2001, at about 18.00 hours, PSI Mr. Gurav and other police staff belonging to Mahidharpura Police Station were patrolling and checking near Shahra Gate and Shivam Motors for illegal liquor

drive, at about 18.15 hours, both the appellants were found coming from Shahra Gate and passed through Shiv Hotel. Police personnel who were checking, however, found suspicious movements of these two appellants and they were accosted by the police. On search from appellant Thakorbhai Motiyabhai Gamit, in one resin bag, one plastic small bag of yellow colour was found and from which, according to police, ganja, weighing 4 kgs and 300 gms was found. While from appellant Bababhai Baviyabhai Gamit, one cloth bag was found and in the said cloth bag, there was one plastic bag, in which ganja was found, weighing about 3 Kgs. and 900 gms. In all, from both the appellants, ganja weighing 8 Kgs 200 gms was found. That was seized by the police and panchnama was prepared. Complaint came to be registered against both the appellants and investigation was handed over to one Mr. P.S.I. Mr. M.M. Gaud. FSL Report of muddamal revealed that seized muddamal was ganja and, therefore, both the appellants were chargesheeted. Vide Exhibit-3, charge was framed against both the appellants and each of them pleaded not guilty. The prosecution examined as many as 8 witnesses and presented on record documentary evidence like panchnama, complaint, office copy of the letter prepared under Section 50, etc. Both of the appellants under statement recorded in pursuance of Section 313 of the Code of Criminal Procedure, denied the evidence of prosecution in toto. Learned counsels for the parties were heard and as aforesaid both the appellants being accused in the same case, came to be

convicted and sentenced. Accused Thakorbhai Motiyabhai Gamit has preferred Criminal Appeal No. 122 of 2003 while accused Bababhai Baviyabhai Gamit has preferred Criminal Appeal No. 123 of 2003.

3 Learned Advocate for the appellants in both the appeals Ms. Roopal R Patel and learned APP Mr. S.S. Patel for the respondent State in both the Appeals were heard at length.

4 Learned Advocate for the appellants in both the appeals made submissions in respect of modification and reduction of sentence. It is submitted that so far as the merits of the matter and conviction of both the appellants are concerned, learned Advocate for the appellants does not want to make any submission as the prosecution has proved the case beyond reasonable doubt. It is submitted that, however, so far as the quantum of sentence is concerned in respect of each of the appellant, the same is required to be reduced to some extent. It is submitted that what is found from both the appellants is ganja and not psychotropic substances. It is submitted that the quantity found from each of the appellant more than small quantity but much lesser than the commercial quantity. It is submitted that both the appellants are poor persons and they may be given a chance to reform themselves. It is submitted that appellant Thakorbhai is married having two small children and aged parents. He is the only bread winner of the family and by doing

miscellaneous labour work he is maintaining his family. While appellant Bababhai also is having a family with three children and with responsibility of aged mother and wife. He is also the only bread winner of the family. It is submitted that the substantive sentence of imprisonment imposed upon each of the appellant by the Trial Judge of five years rigorous imprisonment has already been undergone by each of the appellant and now each of the appellant is undergoing sentence in default of fine imposed upon them. In this view of the matter, it is submitted that what is required to be modified is the reduction of sentence imposed upon each of the appellant in default of fine of Rs. 25,000/- considering the sentence they have already undergone, each of the appellant be released from jail.

5 Learned APP Mr. S.S. Patel was heard in respect of only submission made by learned Advocate for the appellants in both the appeals as to reduction of sentence imposed upon each of the appellant, in default to pay fine.

6 Having heard learned counsels for the parties, from the facts and circumstances of the case, it appears that, request made by learned Advocate for the appellants appears to be reasonable and acceptable in view of the fact that both the appellants have undergone substantive sentence of imprisonment of five years imposed upon each of the appellant. Record and Proceedings of the

Trial Court is available with this Court. In addition to that, jail remarks in respect of each of the appellant is also made available to this Court. It is found that right from 26th of August, 2001, each of the appellant is in jail and none of the appellant is either released on temporary bail or on bail during the period. Jail remarks denotes that each of the appellant has undergone sentence of one year four months and two days by way of set off and both the appellants have undergone the sentence of imprisonment of 3 years 7 months 28 days after conviction. This position emerges on 25th of August, 2006. Today we are on 19th of September, 2006. Therefore, it appears that on 25th of August, 2006, each of the appellant has completed the substantive sentence of imprisonment of five years and from 26th of August, 2006, each of the appellant is now undergoing the sentence imposed upon each of the appellant in default of fine of Rs. 25,000/-. In this view of matter, while the conviction is not interfered, and the substantive sentence of imprisonment awarded to each of the appellant is not interfered and further having regard to the above mentioned facts and circumstances of the case, the sentence imposed upon each of the appellant in default of fine is required to be reduced to already undergone instead of six months as has been awarded by the Trial Court to each of the appellant. The sentence in default of fine comes to about 24 days as per the jail remarks.

7 In the result, the following order is passed :

Criminal Appeal No. 122 of 2003 is partly allowed. While maintaining the conviction awarded to the appellant Thakorbhai Motiyabhai Gamit and while maintaining the sentence of imprisonment of five years awarded to him, only the quantum of sentence awarded to the appellant – Thakorbhai Motiyabhai Gamit by learned Trial Judge in default in lieu of fine of Rs. 25,000/- is reduced to the extent of undergone which comes to 24 days instead of six months as awarded by the learned Trial Judge. The rest of the Appeal of the appellant - Thakorbhai Motibhai Gamit, except interference in quantum of sentence awarded in default of paying fine, as aforesaid, shall stand dismissed. It is further directed that appellant - Thakorebhai Motibhai Gamit be set at liberty forthwith by the jail authorities if he is not required to detain in jail for any other purpose.

Criminal Appeal No. 123 of 2003 is partly allowed. While maintaining the conviction awarded to the appellant Bababhai Baviyabhai Gamit and while maintaining the sentence of imprisonment of five years awarded to him, only the quantum of sentence awarded to the appellant – Bababhai Baviyabhai Gamit by learned Trial Judge in default in lieu of fine of Rs. 25,000/- is reduced to the extent of undergone which comes to 24 days instead of six months as awarded by the learned Trial

Judge. The rest of the Appeal of the appellant Bababhai Baviyabhai Gamit, except interference in quantum of sentence awarded in default of paying fine, as aforesaid, shall stand dismissed. It is further directed that appellant Bababhai Baviyabhai Gamit be set at liberty forthwith by jail authorities if he is not required to detain in jail for any other purpose.

Office is directed to transmit this operative order to the Jail Authority, Baroda Central Jail, in respect of appellant - Thakorbhai Motiyabhai Gamit and Jail Authority, Surat District Jail, in respect of appellant – Bababhai Baviyabhai Gamit, today itself as, at present, appellant – Thakorbhai Motiyabhai Gamit is in Baroda Central Jail while appellant Bababhai Baviyabhai Gamit is in Surat District Jail.

(J. R. VORA, J.)

pnnair